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and certain subsidiaries

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) In Proceedings Under Chapter 11
)
BAPTIST FOUNDATION OF ARIZONA, INC.,) Case Nos. 99-13275-ECF-GBN through
an Arizona nonprofit 501(c)(3) corporation, et al.,) 99-13364-ECF-RTB
)
Debtors.) All Cases Jointly Administered Under Case
) No. 99-13275-ECF-GBN
)
) **RESPONSE TO THE MOTION TO COMPEL**
) **IMMEDIATE ASSUMPTION OR**
) **REJECTION OF EXECUTORY CONTRACT**
) **WITH MELLON US LEASING AND FOR**
) **PAYMENT OF POST PETITION**
) **OBLIGATIONS**

Date Of Hearing: November 16, 2000
Time Of Hearing: 10 a.m. MST

The BAPTIST FOUNDATION OF ARIZONA, INC., an Arizona section 501(c)(3) nonprofit corporation ("BFA"), and together with certain of its subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively with BFA, the "Companies"), hereby files its Response ("Response") to the Mellon US Leasing ("Mellon") Motion To Compel Immediate Assumption Or Rejection Of Executory Contract With Mellon US Leasing And For

1 Payment Of Post Petition Obligations” (the “Motion”). In support of this Response, the
2 Companies rely on the attached Memorandum of Points and Authorities.

3 RESPECTFULLY SUBMITTED this 7th day of November, 2000.

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MEMORANDUM OF POINTS AND AUTHORITIES

Background

1. On November 9, 1999, the Companies filed voluntary petitions (“Petitions”) for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. Since the commencement of their Chapter 11 cases, the Companies have continued to operate their business and manage their assets as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Companies’ bankruptcy cases are jointly administered pursuant to an Order entered by the Bankruptcy Court on November 9, 1999. The Companies have also filed a motion with the Court requesting substantive consolidation. The Companies have requested that the substantive consolidation motion be heard in conjunction with the confirmation hearing regarding the Companies’ liquidating plan of reorganization.

4. At the time the Companies filed their Petitions, there were a number of BFA subsidiaries and affiliates that did not file petitions. Upon further analysis of certain non-debtor subsidiaries and affiliates of the Companies, the Restructuring Committee for the Companies determined that it was in the best interest of Foundation Still Waters, Inc. (“FSWI”) to seek Chapter 11 bankruptcy protection.

5. On or about September 15, 2000, FSWI filed for Chapter 11 bankruptcy protection. Subsequent thereto the Court has entered an Order for the joint administration of FSWI bankruptcy case with those original cases filed on November 9, 1999.

1
2 **There Is No Basis For The Relief Requested**

3 7. Prior to the filing of its Petition on or about September 15, 2000, FSWI as a non-
4 debtor entity took over the responsibility for the payments required under that certain letter
5 agreement dated December 1, 1998 as between Mellon and the debtor entity Still Waters
6 Development Company LLP ("SWDC").
7

8 8. Due to an oversight, during the time that the Companies were contemplating the
9 need to file FSWI into bankruptcy the Companies ceased payments to Mellon. This oversight
10 has now been corrected and the Companies will be remitting the necessary payment to bring
11 Mellon current during the post-petition period.
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13 9. Under the Order of this Court dated August 25, 2000, the Companies have until
14 the end of the hearing on confirmation of the Companies' First Amended Joint Liquidating Plan
15 of Reorganization to determine whether it will assume or reject its remaining executory contracts
16 and unexpired leases. As such, Mellon's motion is pre-mature.
17

18 10. To date the Companies have made concerted efforts to identify those leases and
19 executory contracts it will either assume or reject. The stakes for such decisions are high. If
20 forced to immediately decide to assume or reject the Mellon contract the Companies will be
21 placed in the untenable position of having to assume the remainder of the contract in order to
22 protect their assets, or prematurely reject this contract which may ultimately prove useful or even
23 necessary to a successful reorganization and post-confirmation operations.
24

25 11. The Companies must be given the time previously afforded to them by the Court
26 to determine whether they will assume or reject the Mellon contract.
27
28

1 12. By bringing the Mellon contract current for the outstanding post-petition balance,
2 and keeping Mellon current going forward, there is no reason to require the Companies to
3 immediately assume or reject the contract. There simply is not sufficient basis under the
4 circumstances for doing so.

5
6 **Conclusion**

7 13. The Companies agree to bring the post-petition balance that is due and owing
8 current. However, the Court should deny Mellon's request for immediate assumption or
9 rejection of its contract and allow the Companies to continue to move forward in its analysis of
10 these matters as previously authorized in its August 25, 2000 Order.

11 RESPECTFULLY SUBMITTED this 7th day of November, 2000.

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